

HR-3793 OLC Draft Comment to Congress

STATINTL

[redacted]
Chief, Review Staff, OP
1006 AMES

3383

20 July 1977

OP/EA
5E-58, Hqs.

W.A.

Bob:

Concur with the gist of the memorandum, but find it lacks cohesion and orderly thought progression. I've numbered the paragraphs so you can track my reactions.

Paragraph 2 states the facts of the Bill but not the problem they pose for us or the Intelligence Community. Paragraph 4 presents reasons why the facts in the second paragraph pose problems...i.e., in conflict with our National Security Act authorities for termination without appeal. (The Bill would permit CIAers to appeal to the President and open agency records to the employee's representative, albeit such is an Agency employee.) and should, I think, follow number 2.

The third paragraph has some gratuitous verbage, necessary to these things, and I think more properly would come after the current number 4.

STATINTL

[redacted]

DRAFT

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Honorable Robert N. C. Nix, Chairman
Committee on Post Office and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

(1) I am writing to offer my views on H.R. 3793. Under this bill, an employee under investigation for misconduct which could lead to suspension, removal, or reduction in rank or pay can be questioned only after he has been advised in writing of the fact he is under investigation and has been given up to five days to obtain a representative of his choice to be present during questioning. This bill is virtually identical to H.R. 6227, introduced in the last Congress, and the Agency's views remain unchanged from those expressed in our letter of 10 March 1976 to the Senate Committee on Post Office and Civil Service. For the reasons stated below, we continue to oppose the bill.

(2) We share the concerns expressed by the Civil Service Commission in its report on this bill and join with the Commission in recommending against its enactment. In addition, we direct the Committee's attention to the special provisions for the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation included in H.R. 3793. Under section 7171(b) the representative of an employee in these agencies must be an employee of the same agency and be approved by the agency for access to the information involved in the investigation. Moreover, under section 7172(b), employees of these agencies against whom adverse action is taken in violation of the bill's provisions are entitled to appeal such action to the President or his designee, whose recommendation would be final.

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(3) Perhaps more than other institutions, intelligence organizations, if they are to be effective, must treat their personnel fairly. In most instances, the Central Intelligence Agency's practice and regulations are fully consistent with the underlying purpose of H.R. 3793. However, there are circumstances in which applying such a blanket statutory requirement to this Agency and other intelligence agencies would be inappropriate and inadvisable. Even though the provisions of section 7171(b) and 7172(b) meet some of the special considerations which must apply in the case of our foreign intelligence agencies, I believe it is essential that these agencies be fully exempted from H.R. 3793 in light of their unique missions and certain statutory authorities which have as their purpose the protection of intelligence sources and methods.

(4) The administration of the Central Intelligence Agency is governed by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949. The former imposes on the Director of Central Intelligence responsibility for protecting intelligence sources and methods from unauthorized disclosure (50 U.S.C. 403). It also grants the Director the discretion to terminate the employment of any officer or employee of the Agency "whenever he shall deem such termination necessary or advisable in the interests of the United States" (50 U.S.C. 403). The Director of the National Security Agency has similar termination authority (50 U.S.C. 833). These statutory authorities are considered to be absolutely essential in the management of our foreign intelligence efforts. I believe the requirements of section 7171(b) and 7172(b) conflict with these authorities and

would undermine important managerial programs which have as their purpose the protection of intelligence sources and methods. For these reasons, we strongly oppose enactment of H.R. 3793.

(S) The Office of Management and Budget has advised there is no objection to the submission of this report and that enactment of H.R. 3793 would not be in accord with the program of the President.

Yours sincerely,

STANSFIELD TURNER